IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1047 OF 2007

Kamlesh Mahendranath Pandey, .. Petitioner.

Vs

The Sr.Inspector of police and ors Respondents.

Mr S.V.Kotwal with Mr M.S.Mohite, for the petitioner.
Ms U.V.Kejariwal, APP for the respondents.

CORAM : SMT.RANJANA DESAI & D.B.BHOSALE,JJ.

DATED : 27th JUNE, 2007

P.C.:

1. The petitioner, who is the original complainant, has challenged in this petition the order dated 31.3.2007 passed by the Ad-hoc Addl.Sessions Judge, Palghar in Sessions Case no.7 of 2003.

2. It appears that the original complainant had filed an application under section 173(8) of the Code of Criminal Procedure ("the Code") seeking direction from the trial Court for further investigation. That application was rejected by the trial Court. Before the trial Court it was urged that the police should have charged the accused with the offence punishable under section 120-B of the Indian Penal Code. However, the police have not done so. The learned Magistrate rejected his submission by observing that

if during trial it is found that the accused need to be charged with certain offences, the charge can be altered at appropriate time, if necessary. We concur with the learned Judge on this aspect. No interference is necessary with the impugned order on this count.

3. Mr Kotwal then urged that certain persons, who ought to have been shown as the accused, have not been arrested. They are cited as witnesses. Mr Kotwal further submitted that the persons, whose names are mentioned in the spot panchanama as the persons whose houses are situated nearby, have not been examined. Thus, the police have, by their shoddy investigation, created serious lacunae in the investigation. It is, therefore, necessary to direct further investigation. Mr Kotwal placed reliance on the judgment of the Supreme Court in **Hasanbhai Valibhai Qureshi Vs. State of Gujarat and ors (AIR 2004 S.C. 2078)** and contended that even after Court takes cognizance of offence on earlier report submitted by police, it is open to the police to conduct further investigation in a proper manner and further investigation cannot be ruled out merely on grounds that it may delay trial.

4. We are not inclined to issue direction for

further investigation. It is pertinent to note that the first chargesheet in this case is filed on 30.11.2002. The supplementary charge is filed on 30.7.2005. The present petition is filed as late as on 11.6.2007. The petitioner has come to the court at a belated stage. If it is the case of the petitioner that statements of certain persons, whose names have come to light during investigation ought to have been recorded, it is always open to the trial Court to summon those witnesses as court witnesses. The grievance of Mr Kotwal that instead of arraigning certain persons as the accused they have been treated as witnesses, is taken care of by section 319 of the Code. It is always open to the court if it comes to the conclusion that any person not being the accused, has committed any offence for which such person could be tried together with the accused to proceed against such person for the offence which he appears to have committed. In this case, if found necessary, the court in its discretion may do so. It is not necessary for us to refer to the judgment of the Supreme Court in Hasanbhai Valibhai Qureshi (supra) because we are not dismissing the petition on the ground that further investigation will delay the trial. The petition is dismissed.

(D.B.BHOSALE,J.)

(SMT.RANJANA DESAI,J.)